

REPORT OF THE COMMITTEE ON ZONING AND PLANNING

Voting Members:

Ikaika Anderson, Chair; Trevor Ozawa, Vice-Chair;
Carol Fukunaga, Ann H. Kobayashi, Joey Manahan

Committee Meeting Held
July 23, 2015

Honorable Ernest Y. Martin
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Zoning and Planning, to which was referred
Bill 46 (2015) entitled:

"A BILL FOR AN ORDINANCE RELATING TO CITY-OWNED STREAMS,"

which passed Second Reading at the July 8, 2015 Council meeting, reports as follows:

The purpose of Bill 46 (2015) is to regulate city-owned streams or portions thereof. The Bill would prohibit the following activities on city-owned streams and stream banks: camping; erecting a tent or structure; entering into or upon the stream if public access has been prohibited by the Director of Facility Maintenance and signs indicating the prohibition have been posted; and engaging in any other activities prohibited by the Director of Facility Maintenance if signs indicating the prohibited activities have been posted.

At your Committee's meeting on July 23, 2015, the Director of Facility Maintenance testified in support of the intent of the bill but noted that there are existing State and City laws that already address the public health and safety issues targeted by Bill 46. He further stated that the City currently can clear streams along adjacent walls under the stored property ordinance and that the Stormwater Branch has the ability to levy fines for encampments on city streams. The Director stated that the Department of Facility Maintenance is in a position to revise and re-define administrative rules with respect to

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ADOPTED ON AUG 5 2015

COMMITTEE REPORT NO. 301

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city streams. A committee member asked if the Mayor is in support of the measure. The Director responded that he could not speak for the Mayor.

A representative of Lum Sai Ho Tong testified in support of Bill 46 and offered comments. Two individuals also testified in support of the Bill and one individual offered comments. Written testimony in opposition to Bill 46 was received from Hawaii Appleseed Center for Law & Economic Justice. The Department of Facility Maintenance submitted written comments.

Your Committee considered two separate posted CD1 versions of the Bill and, after consideration, adopted a hand-carried CD1 that combined elements of the two posted CD1s as follows:

- A. Adds a finding (to the Findings and Purpose section) that stream and coastal water quality is affected by the pattern and content of storm water and floodwater drainage into streams from stream riparian zones immediately adjacent to the stream.
- B. Adds a definition of "stream riparian zone" and include City-owned stream riparian zones as areas the Bill's prohibition applies to.
- C. Adds the phrase "without a permit" after "camp" in Section 41-____.2(a)(1) and after "erect a tent or structure" in Section 41-____.2(a)(2).
- D. Adds language that requires the DFM director, when adopting rules governing access to or activities on city-owned streams, to base decisions on a careful and thorough analysis that balances public safety, stream preservation and management, and rights of the public to access streams.

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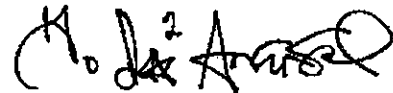
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E. Makes miscellaneous technical and non-substantive changes.

Your Committee on Zoning and Planning is in accord with the intent and purpose of Bill 46 (2015), as amended herein, and recommends that it pass Third Reading in the form attached hereto, as Bill 46 (2015), CD1. (Ayes: Anderson, Fukunaga, Kobayashi, Manahan, Ozawa – 5; Noes: None.)

Respectfully submitted,



Committee Chair

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CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON AUG 5 2015

COMMITTEE REPORT NO. 301



A BILL FOR AN ORDINANCE

RELATING TO CITY-OWNED STREAMS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Council Findings and Purpose. The purpose of this ordinance is to regulate City-owned streams or portions thereof.

Streams are natural, altered or improved channels that have seasonal or continuous water flows as a result of either surface stormwater runoff or groundwater influx, or both. The Council finds that if persons camp, erect tents or structures, or engage in certain other activities on City-owned streambanks, it may create a public health and safety hazard because persons lingering or remaining on streambank areas may be swept away by sudden floodwaters, may accidentally fall into the stream, or may urinate, defecate, bathe, or otherwise contaminate the stream waters, resulting in unsanitary and unhealthy conditions. The Council further finds that stream and coastal water quality is affected by the pattern and content of storm water and floodwater drainage into streams from stream riparian zones immediately adjacent to streams.

This ordinance is intended to prevent harm to the health, safety and general welfare of the public, and preserve water quality by regulating activities on City-owned streams and City-owned stream riparian zones, or portions thereof.

SECTION 2. Chapter 41, Revised Ordinances of Honolulu 1990, ("Regulated Activities Within the City"), is amended by adding a new article to be appropriately designated by the revisor of ordinances and to read as follows:

"Article __. City-Owned Streams

Sec. 41-__.1 Definitions.

For purposes of this article:

"Camp" or "camping" means the use and occupation of a city-owned stream or city-owned stream riparian zone as a temporary or permanent dwelling place or sleeping place.

"City" means the City and County of Honolulu.

"City-owned" means the city has the use, control or occupation of a stream in its entirety, or portion thereof including its channels, streambeds, streambanks and drainageways, or the mouth of a stream at the ocean, or the stream riparian zone, with claim of ownership, whether the city's interest is in absolute fee or a lesser estate.



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"Director" means the director of the department of facility maintenance.

"Dwelling place" means a place used for human habitation as an overnight accommodation, lodging, or shelter on either a temporary or permanent basis.

"Human habitation" means the act of using, occupying or inhabiting a place of lodging or shelter on a permanent or temporary basis as a place of residence or sojourn.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is asleep inside a tent, sleeping bag, or some form of temporary shelter or is asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard or newspapers.

"Stream" means natural, altered or improved channels that have seasonal or continuous water flows as a result of either surface stormwater runoff or groundwater influx, or both. Streams include channels, canals, streambeds, streambanks, drainageways and stream mouths. Streams do not include ditches, flumes, reservoirs, lagoons, holding and silting basins, lakes, ponds and their associated ditches, underground drain lines or systems, and any portions of irrigation systems.

"Stream riparian zone" means the public land area that extends 100 feet away from the edge of the streambank.

"Structure" means anything above existing grade constructed or erected with a fixed location on the ground, or requiring a fixed location on the ground, or attached to something having or requiring a fixed location on the ground.

"Tent" means a collapsible structure consisting of sheets of canvas, fabric or other material attached to or draped over a frame of poles or a supporting rope that has more than one wall.

"Wall" means an upright, vertical or slanted structure, partition or divider serving to enclose, divide, support or protect.

Sec. 41-__2 Regulation of city-owned streams.

- (a) It is unlawful for any person to do the following on any portion of a city-owned stream or city-owned stream riparian zone:
 - (1) Camp without a permit;



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- (2) Erect a tent or structure without a permit;
 - (3) Enter into or upon the stream or stream riparian zone if public access has been prohibited by the director and signs indicating the prohibition have been posted; and
 - (4) Engage in any other activities prohibited by the director, if signs indicating the prohibited activities have been posted.
- (b) The director may, by rules adopted pursuant to HRS Chapter 91, prohibit access to specified city-owned streams or city-owned stream riparian zones, or prohibit activities on specified city-owned streams or city-owned stream riparian zones if the director finds it necessary to protect public health, safety, and welfare. When adopting rules, the director shall base decisions on a careful and thorough analysis that balances public safety, stream preservation and management, and rights of the public to access streams.
- (c) No person shall be cited for a violation of this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section.

Sec. 41-___.3 Penalty.

Any person violating any provision of this article shall, upon conviction, be guilty of a petty misdemeanor and subject to punishment in accordance with HRS Sections 706-640 and 706-663, as amended."



CITY COUNCIL
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HONOLULU, HAWAII

ORDINANCE _____

BILL 46 (2015), CD1

A BILL FOR AN ORDINANCE

SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ernest Martin

Joey Manahan

DATE OF INTRODUCTION:

May 28, 2015
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu